Secrt 11-27—15,004—22-8-46.

Home **(194 6) Department.**

Ms. **SERIES.**

G.O. NO. Ms. No.3629.

Dated 19th November 1946.

[Despatch Abstract.]

Prisoners- Classification. K. Thirumula Rao- C.C. 161/45 on the file of the Sub Divisional Magistrate, Bellary--'B' class- Ordered.

Ref.C. 1898/46. E.1. Dated 29.10.1946.

From

Y. I. Anantaraman Esq., I.C.S.,
District Magistrate, Bellary.

To

The Secretary to Government,
Home Department, Madras

Sir,

Criminal Justice - Accused K. Thirumula Rao - C.C. 161/45 on the file of the Sub Divisional Magistrate, Bellary - confirmation of classification of Prisoner - Requested.

. . .

In C.C. 161/45. on the file of the Sub Divisional Magistrate, Bellary the accused K. Thirumula Rao was convicted and sentenced to undergo imprisonment and placed in 'B' class by the Sub Divisional Magistrate, Bellary. The prisoner had acted as Taluk Head Accountant, Famine Charge Officer, and Rationing Officer for a long time. He is a Brahman, a Graduate of the Madras University. He was accustomed to superior mode of living. In these circumstances, 'B' class was awarded by the Sub Divisional Magistrate tentatively. I agree with the Sub Divisional Magistrate, and recommend that the classification may be confirmed as required by Rule 747.B. of the Madras Prison and Reformatory Manual. A copy of the Judgment of the Sub Divisional Magistrate, is herein enclosed for perusal.

For District Magistrate.

CLR. 31.10.

Cr. J. Mis. 124.

In the Court of the Sub Divisional Magistrate, Bellary.

JUDGMENT IN CALENDAR CASE NO. 131/45 ON THE FILE OF THE Sub Divl. MAGISTRATE OF Bellary.

Complainant - - - - Rev. S.M.O. Hospet

Accused - - - - Thirumula[illegible]

Offence - - - - Illegal [illegible]

Finding - - - - Guilty

Sentence - - - - to undergo R.I. for one year and to pay a fine of Rs. [illegible] in default to undergo S.I. for six months under sec. 109 I.P.C. and to undergo R.I. for six months under sec. 411 read with sec. 511 I.P.C. The sentences to run consecutively.

Serial number. (1)	Description of the accused.						Date of							Explanation of delay. (15)
	Name. (2)	Father's name. (3)	Caste or race. (4)	Occupation. (5)	Residence. (6)	Age. (7)	Occurrence. (8)	Complaint. (9)	Apprehension or appearance. (10)	Release on bail. (11)	Commencement of trial. (12)	Close of trial. (13)	Sentence or order. (14)	
I	K. Thirumula Rao	Narasinga Rao	Brahman.	Assistant Medical Officer, Hospet.	Bellary.	42	31-7-45.	28-8-45 16.10.45	8-9.45	28.8 45.	10.11.45	31.8.46	10.9.46	

Received by transfer from the Sub Divisional [illegible], Hospet.

Cr. J. Mis. 124.

In the Court of the Sub Divisional Magistrate, Bellary.

JUDGMENT IN CALENDAR CASE No. 161/45 ON THE FILE OF THE Sub Divl. MAGISTRATE OF Bellary.

Complainant - - - - Rex. S.H.O. Hospet

Accused - - - - Thirumula Rao

Offence - - - - Illegal gratification

Finding - - - - Guilty

Sentence - - - - to undergo R.I. for one year and to pay a fine of one thousand rupees in default to undergo S.I. for six months under sec. 409 I.P.C. and to undergo S.I. for six months under sec. 161 read with sec. 511 I.P.C. The sentences to run consecutively.

In the Court of the Sub Divisional Magistrate, Bellary.
Sri Y. Pitchi Reddi, B.A.,

Dated -9-46.

C.C. 161/45

Judgment:

The accused is the Ex-Rationing Officer, Hospet. He was charge sheeted by the Hospet Police for offences under Sections 161, 409 and 420 I.P.C. The case was taken on file by the Sub Divisional Magistrate, Hospet but subsequently the District Magistrate, in his Proceedings C.M.P. 51/45 dated 3-10-45 transferred to this court for disposal. The evidence in this case was recorded by two of my predecessors. The prosecution case is as follows:-

P.W. 2 Gundachar, is a native of Hospet but now residing at Hindupur. He trades in silk along with P.W. 14 Narasimhayya of Hindupur. On 29-7-45 the P.Ws. 2 and 4 along with a servant Kondayya came down from Hindupur to Hospet via Anantapur. They reached Hospet on 30-7-45 at about 6-30 P.M. They had three beds in which they kept four bags of silk. The total weight of the silk bundles was 48 lbs. On the 30th night they wanted to go by night train to Gadag where the rate of silk was higher. Silk is a controlled article and the export outside the Province without a permit is an offence under the Defence of India Rules. P.Ws 2 and 14 had no permits with them. P.W. 2 went in advance of the other to to purchase tickets. The beds were in the custody of the other two. P.W. 2 purchased three third class tickets (Ex. A, A1 and A2) which were issued by P.W. 6 the Booking Clerk at the Railway Station. P.W. 2 waited for some time but as his companions did not turn up he went in search of them. As he approached the ration chowki he saw his companions in the custody of the chowkidars (Jalel and Bheemappa) who had taken them on custody as the silk was not to be taken out of limits without a permit. The chowkidars detained P.W. 14 and Kondayya in their custody. Next morning (31-7-45) they were marched to the Rationing Office along with the silk. P.W. 1 Eranna, a shop keeper near the choki noticed this. P.W. 12, Raghavendra Rao, a clerk of the Railway Station who happened to pass that way also noticed that the two chowkidars had detained two persons who were carrying silk with them. P.W. 2 also accompanied P.W. 14 and Kondayya to the Rationing Office. They requested the accused to let them go but the accused refused as it was a serious offence for which they would be prosecuted. The accused, demanded a bribe of Rs. 500/- and allowed them time, to the next day. P.W. 2 had Rs. 400/- with him. He sent a wire to Dodda Thimma Reddy of Hindupur: P.W. 2 left the Rationing Office at 1 or 1-30 P.M. He went to an advocate P.W. 9 and informed him about this. He advised him not to bribe the Rationing Officer but report to the Police. P.W. 2 issued the wire Ex. B. P.W. 5 is the post master who issued the wire. After the issue of Ex. B P.W. 14 and Kondayya were released from custody in Rationing Office but the silk was still kept in the Rationing Office. P.W. 2 waited for the money till 1-8-45 evening but as money was not received he borrowed Rs. 150/- as hand loan from P.W. 8, Padmanabhachar, the proprietor of a coffee hotel. On the same night P.W. 2, P.W. 14 along with P.W. 7 Krishna Murthi Gowd of Hospet went to the accused with the money. The accused took the money and made a further demand of Rs. 500/- in addition as otherwise he would lock them up. The accused made similar threats. P.W. 2 and 14 promised to pay as demanded by the accused and took back Rs. 500/- given to him. The accused allowed them time for two days. That night P.W. 2 sent P.W. 14 to Gadag to get Rs. 500/- P.W. 14 left by that night train and returned on 2-8-45 accompanied by P.W. 13, Ramanatha Siddalinga of the Gadag Firm of Dharmasa Siddalinga who brought Rs. 600/- with him. P.W. 13 gave the amount to P.W. 14. P.W. 2 and 14 went to the accused on 3-8-45 with the promised amount of Rs. 1000/- The accused stated that as they did not come in time he had sold the silk to P.W. 3 and paid himself. P.Ws 2 and 14 protested and they were asked to come again in the evening. P.Ws. 2 and 14 went both morning and evening on 4-8-45 and again on 5-8-45 when they were finally informed by the accused that he had sold the silk to P.W. 13 and then they could do what ever they liked. P.Ws. 2 and 14 went to their advocate P.W. 9 and reported the matter. P.W. 9 drafted a complaint which was presented at the Police station. Ex. C is the complaint by P.W. 14. M.O. I is one of the silk bags with silk. M.O. II is the bag which contained silk and which is now empty. M.O. III is the bed sheet which belonged to P.W. 2. These were identified by P.

While evading P.Ws 2 and 14 in the manner referred to above the accused entered into a secret negotiation with P.W. 3, Iyeli Mallanna. On 1-8-45 the accused sent for him at about 6-30 P.M. and asked him to purchase silk. On the assurance of the accused that no troubles would come he settled the price at Rs. 32/- per lb. P.W. 3 went again at 10-30 P.M. to the accused. The silk was weighed and found to be 46 lbs. P.W. 3 did not take delivery of the silk but was asked to come next day evening as the owner of the silk who had gone to Gadag was expected the next evening. On 2-8-45 again P.W. 3 went but the accused told him that the Gadag men had not come and asked him to come next day. Finally on 3-8-45 night at about 10-30 P.M. the accused asked P.W. 3 to separate 6 lbs and paid Rs. 1296/- and take the rest. P.W. 3 accordingly weighed 6 lbs and paid Rs. 1296/- to the accused being the price of the remaining 40 lbs which was however not weighed by him them. The silk was in two white bags and he took them home. On 5-8-45 morning P.W. 3 sold the silk which weighed only 36 lbs to Tulja Ramasa of Katriki (P.W. 4) who is a cloth merchant at Rs. 36/- per lb. Thus the P.W. 3 got Rs. 1296/- The accused and P.W. 3 went to the station to see that no obstruction was caused to P.W. 4 when the silk was being carried.

The accused meanwhile drafted a report to the Textile Control Office Bellary on 2-8-45 that on the night of 1-8-45 he had chowkider Bheemappa caught a man who was smuggling raw silk of six lbs from the Hospet Railway Station to Gadag and that the offender had no permit and then the offender escaped and that the offender gave his name as Narasappa and a native of Anantapur. The Textile Control Officer was requested to take action to dispose of the seized property Ex. D. is the report filed by P.W. 10 Textile Control Officer, in whose office it was received on 4-8-45. Again another report was sent by the accused dated 6-8-45 (Ex. E) addressed to the Textile Control Officer in which it was stated that the same may beforwarded to the Revenue Divisional Officer, Hospet. P.W. 11 is the clerk of the Rationing Office, Hospet. He states that Ex. E was fair copied by him on 2-8-45 and sent to the accused for signature. It was despatched on 3-8-45 only. Ex. F is the local delivery cum-despatch register. Ex. F is the entry in the despatch book which indicates that the cover was despatched on 3rd only.

P.W. 15 is the Sub Inspector of Police, Hospet. He received the complaint Ex. C. and investigated into the case. He searched the house and the office room of the accused. He recovered M.Os. I, I(a) and III. Ex. G is the search list. P.W. 15 did not get any incriminating articles to the house of the accused. He examined several witnesses and after completing the investigation he got the sanction of the District Magistrate for the prosecution of the accused (Ex. H)

P.W. 1-15 speak to the above facts.

The accused when examined denies having committed any offence. He states that on 31-7-45 he left the office at about 8 A.M. on outdoor work and returned to office at about 10 A.M. He states that on the way near the Taluk office he met P.W. 9 who asked him assistance regarding some silk bundles which had been seized by the station chowkidars. The accused told him that he was not aware of any of the facts and that if what he said was true, he could not help in any way. He states that he did not see either chowkidars or P.W. 2 and 14 at the office. He states that he never saw P.Ws. 2 and 14 nor did he demand any illegal gratification. He also refers to the seizure of six bundles of raw silk about which he submitted a report in Ex. D. He states that P.Ws. 3, 7 and 8 are not in good terms with him as the vigilent watch kept by him and his subordinates hindered their black marketing activities. He states that P.Ws. 2 and 14 are of suspicious character and have foisted the case with the assistance of P.Ws. 3, 7 and 8.

The prosecution having made out a Prima Facie case against the accused as regards the criminal breach of trust and demand of illegal gratification charge under section 409 I.P.C. and also under 161 I.P.C. read with section 511 I.P.C. was framed by my predecessor

against the accused. The accused pleaded not guilty to the charge.

Most of the P.Ws. have been further cross examined and the salient points elicited are discussed below.

The accused next examined seven defence witnesses on his behalf. D.W. 1 is the Head Clerk of the Textile Control Office, Bellary. He produced along with the file bearing Collector's N.Dis. 4072/45 dated 29-6-45 relating to two gunny bags of yard which the accused seized and handed over to the Tahsildar, Hospet on 23-4-45 a confidential note made by D.W. 5(the then Textile Control Officer) with regard to black marketing activities of P.W. 3. The information is supposed to have been furnished by the accused. D.W. 2 Bheemasena Rao of the A.C.T.C. Hospet from1-4-45. He took charge from D.W. 3, Sri Ramayya. On 22-4-45 the accused sent word to D.W. 2 that there is a case for him and asked him to go to the Railway station. As he was going to the Railway station he met the accused coming with two bags alleged to contain cotton yarn. The accused asked D.W. 2 to take up the case as it was a case of smuggling of cotton yarn. D.W. 2 wanted to consult D.W. 3 for better advice. Meanwhile P.W. 3 tried to interfere but the accused would not heed. D.W. 3 told them that it was a case with which they had no concern and it was for the Textile Control officer to take up. The accused then sent for the Special Rationing Officer for the prevention of smuggling controlled articles (D.W. 4), and handed over the two bags of cotton yard and two Railway gang men who were culprits. P.W. 3 was said to be present then requesting the accused to release the yarn. D.W. 4 enquired the two Railway gang men(Ex. V) and also the accused (Ex. VI). He then submitted a report to the Tahsildar. D.W. 5 files the confidential note initialled by him (Ex. VII) in which a note was made that P.W. 3 is suspected of illicitly carrying on smuggling of yarn to Koppal. D.W. 6 is the typist of the Rationing Office. He files the office copies of the reports of the accused with regard to the seizure of raw silk Ex. VIII and Ex. IX. D.W. 7 Mr. P.S.Viswanatha Iyer I.C.S., is the most important defence witness. He states that the accused served under him when he was Sub Collector, Hospet and also Collector Bellary in different capacities as Taluk Head Accountant, Loans Accountant, Famine Charge Officer, and Rationing Officer, Hospet and that his work was satisfactory. He states that the accused put up a large number of cases of Rationing offences and that one senior Vakil (Mr. Venkobachar) was also charged by him which resulted in fine. D.W. 7 says as follows. 'Neither officially nor unofficially did I hear anything against him'. D.W. 7 states that the accused used to visit the Railway Station to detect smuggling cases and check them. D.W. 7 left Hospet on December 1944

I shall next examine the evidence in th[redacted] to the plea of the accused. The prosecution has proved its case through the several witnesses. P.W. 1 and 12 who are independent and disinterested witnesses bear testimony to seizure of [redacted] chowkidars. From the evidence of P.Ws. 2, 14, [redacted] prosecution version that 48 lbs of silk [redacted] the accused in the discharge of his duty [redacted] and that he committed criminal [redacted] property is proved. Again the demand of illegal gratification by the accused for forbearing to do an offical act is proved by the evidence of P.Ws. 2, 14, 7 and also P.W. 8.

The accused does not deny the entire prosecution version. He only pleads non production of the seized property, that he questioned the chowkidars because of P.W. 9 enquiring him and that the chowkidars denied any such seizure by them. The suggestion is that the chowkidars themselves might have left off the case taking a bribe. The accused thus disowns entrustment and depends mostly upon the statement of P.W. 9 in support of ~~him~~ this. The evidence of P.W. 9 has been the subject of much discussion. P.W. 9 has definitely stated in his evidence in chief as follows. "on 31-7-45 at about 9 A.M. P.W. 2 came to me in my office and told me that his silk about 48 lbs was seized and his two persons detained along with the silk and that all were produced that day before the Rationing Officer. I was asked to get the two persons and the silk released. I met the Rationing Officer the accused at about 10.30 that morning. The accused told me that

it is a serious offence and that he cannot let go the people and silk". The bove statement is clear and unambiguous. It strengthens the case of entrustment. The learned pleader for accused states that this suits in with the plea of the accused and that it is in conflict with the evidence of P.W. 2 who states in his deposition that he met P.W. 9 at bout 1 or 1-30 P.M. The learned Public Prosecutor states that the timing given out by P.W. 2 is a bonafide mistake as the work of bargaining and fixing up of bribe amount at Rationing Office could not have taken up so much time. I am also inclined to believe that the timing given out by P.W. 2 should be a bonafide mistake. P.W. 9 could not have made any mistake in his timing. The learned pleader for defence argues that the evidence of P.W. 9 negatives the case of entrustment but the reasons are not convincing. If the accused had not seen the silk or the persons connected with it he would have straight away told P.W. 9 that he had not so far seen the person or silk or heard anything about it. The reply of the accused to P.W. 9 that it is a serious offence and that he cannot let go the people and silk shows that the accused was already in the know of the case and that the silk was already in his possession. Further if really the accused was not entrusted with the silk and P.W. 9 talked to him the natural conduct of such a vigilant officer was to rush to the chowki to see what was done with the silk but on the other hand he takes it leisurely and enquires the chowkidars in the evening and P.W. 9 two or three days later. This is not the ordinary conduct of work of any office and especially one who is said to be vigilant in his work. P.W. 9 states that two or three days later the accused asked him who these Hindupur people were. I am not prepared to attach much significance to this as P.W. 9 who took pains to go to the accused to get the silk and the person released would have given out all the details in the first instance itself. Further the case of entrustment does not depend upon the sole evidence of P.W. 9 only. Apart from the evidence of P.Ws 2 and 14 who speak to the entrustment there is the evidence of P.W. 3 who has purchased the silk from the accused and also P.W. 4 who has in turn purchased from P.W. 3. The sale to P.W. 3 cannot arise unless the silk had come into the possession of the accused.

The next portion of the defence plea is that the accused caught on 1st night 6 lbs of silk rolled in two bags and a bed sheet and about this he drafted a report on 2-8-45 (Ex. D) and despatched it on 3-8-45 (Ex. P.1). The report shows that Chowkidar Bheemappa and himself caught one person and that the imaginary person who gave his name as Narasappa escaped. The learned pleader suggests that the person who escaped might be Kondayya. This again is not consistent with the method of work of any officer and especially the accused who according to his own evidence, is oversealous in his duties. If really it had occurred in the manner in which it was reported the proper course would have been to report to the Police and take all precautions to apprehend the culprit. The accused does not do any such thing. He leisurely despatching a report on 3-8-45 after making up his mind to sell the major portion of 40 lbs of silk to P.W. 3. The version of the accused with regard to this is only a myth and evidently he wanted to be overcareful so that in case P.Ws. 2 and 14 report against him he can have evidence to counter act and show that it was a result of his action against them. In the above circumstances the defence plea is untenable.

The learned pleader for the defence has impeached the veracity of certain prosecution witnesses in the light of their antecedents and has also pointed out certain omissions and discrepancies in the prosecution version and some of them deserve consideration. The learned pleader has point d out that the non examination of chowkidars and Kondayya is a serious omission. The learned Public Prosecutor says that what the chowkidars should have said has been elicited by P.Ws. 1 and 12, who are disinterested witnesses. In view of the overwhelming evidence with regard to the entrustment I do not consider them the evidence of the

chowkidar would have been of greater weight. The defence have also not examined the chowkidars to disprove production. The non-examination of Kondayya is not of much importance as he is only a servant of P.Ws. 2 and 14 and the principal persons were examined. The learned pleader for the defence refers to the statements by P.W. 1 that P.Ws. 2 and 14 were the persons caught by the chowkidars but they might be due to a mistaken impression as P.Ws. 2, 14 and Kondayya might have been there and the witness thought P.Ws. 2 and 14 were caught. The discrepancy is not of much importance. As regards the telegram Ex. B, which is a valuable piece of evidence against the accused to prove his demand for illegal gratification the learned pleader for the defence does not dispute the genuineness of it but only pleads that the amount was probably required to bribe the chowkidar. This looks very unnatural. The chowkidars would, if they go out of the way, ordinarily be content with petty sums and would under no circumstances take up the serious responsibility of keeping the silk and persons in their custody indefinitely till their demand is satisfied as they have a superior person in authority on the spot.

The defence suggests that P.W. 3 is a friend of P.W. 2 and that he had a grudge against the accused. The motive has not been proved and even if true is not strong enough for him to depose falsely against the accused. The evidence of P.W. 3 is of great importance to prove the case of bribery against the accused. The learned pleader for the defence points out that his name does not find place in the complaint (Ex. C). This at best is only an omission as all the details need not find place in the complaint. The witness is reported to be an ex-convict for one month and this is said to be about 25 years back. The defence has also tried to show his interestedness in the case as he happened to be a friend of P.W. 2 and that he is a member of the vigilance committee along with the P.W. 3's brother. The circumstances, even if true, are not sufficient to induce the witness to depose falsely against the accused. His conduct in not reporting immediately about this incident is said to be not consistent with his duties as a member of the village vigilence committee but the witness having indulged himself in such a nefarious activity cannot without risk to himself venture to report to the authorities. The returning of Rs. 500/- is again said to be unnatural. But the accused was planning deeply to misappropriate the cost of the silk which is by far greater than the sum originally offered and this explains the conduct.

The veracity of the evidence of P.W. 3 is also impeached by the defence. The defence has tried to prove through the evidence of D.Ws. that P.W. 3 is not a person in the confidence of the accused and that on the other hand when P.W. 3 intervened on a prior occasion when yarn was seized on 22-4-45 the accused did not heed to his request. I should however consider that P.W. 3 should have been a person hand in glove with the accused as otherwise he could not have had the audacity to interfere on the previous occasion when yarn was seized. If however the accused did not comply with the request of the accused it was because the matter had received sufficient publicity and had also been taken to the notice of his co-officers. Ordinarily no person interferes or tries to interfere with an official in the discharge of his duties unless he has some freedom with him previously and unless that person knows that the officer is amenable for such influences. I am not prepared to attach much significance to the Confidential Note (Ex. VII) as it is not authenticated one produced voluntarily by D.W. 1 though not summoned. The learned pleader for defence has pointed out certain discrepancies in his statement but I do not consider that they are of any importance.

P.Ws. 2 and 14 are important witnesses in this cases. The learned defence counsel has marked Ex. II, III and IV to show that P.W. 2 was [illegible] convicted for nine months (though 25 years back) and that his [illegible] was characterised as unbelievable. The antecedents of this [illegible] complimentary but this cannot be sufficient [illegible] prosecution version. When his evidence [illegible] evidence of other disinterested witness there is

no reason to take the antecedents of this witness to believe or disbelieve the entire prosecution version. Further knowing fully that even to offer a bribe is a serious offence, the witness would not expose himself to any such risk by making a false accusation against the accused. As regards P.W. 14, the learned defence counsel points out to me the note left by my predecessor at the end of the deposition regarding the demeanour of the witness. The learned Public Prosecutor states that it is also borne out on record that the witness was ill for a long time and this explains the note made by my predecessor. The contradictions pointed out by the defence counsel in the statement of P.W. 14 though true are not of material significance and are obviously due to a week memory as a result of prolonged sickness of the witness.

The learned pleader states that it is easy to secure the evidence of P.Ws. 4 and 13 as they are co-smugglers. I however do not agree P.Ws. 4 and 13 are respectable persons and have no interest to incriminate the accused. They are strangers to the accused. P.W. 13 pays an income tax of ten thousand rupees. P.W. 4 is a cloth merchant of altogether a different place (Katrike) and has no axe to grind against the accused. Thus there is no force in the argument/ of any of the P.Ws. had any interest /that to incriminate the accused and foist a case against him.

The learned pleader for the defence has however suggested a motive for the filing of a false complaint according to him. He states that as the accused had caught 6 lbs of silk on 1-8-45 about which a report was sent to the Textile Control Officer on 3-8-45 and finding that he was already on their track P.Ws. 2 and 14 conspired with their friends (P.Ws. 3 and 7) and put up this false case against him. The plea of the accused with regard to the seizure of silk from an imaginary person has been rejected already as palpably false. Even taking it for granted there are no reasons why P.Ws. 2 and 14 same should unnecessarily be apprehensive and rush to the Police and prefer a complaint exposing themselves to the risks of being prosecuted for attempting to bribe a Government servant and knowing full well the serious consequence involved therein. Further the accused was careful enough not give out any of the names of P.Ws. 2, 14 or Kondayya and they need not have under such circumstances anticipated any trouble. Further P.Ws. 2 and 14 had the benefit of the advice of P.W.9(a lawyer) before complaint and he would not have suggested this course to counter act the report of the accused. As regards the accused enquiring P.W 9 on 2nd or 3rd who the Hindpur people were the matter has been discussed above. Thus the motive for a false complaint as suggested by the defence is not acceptable.

The learned pleader for the defence has commented upon the non recovery of any more silk apart from what was found in the Rationing Office and the two white bags. According to the prosecution version the silk sold by the accused to P.W. 3 was in turn sold by the latter to P.W. 4 who in turn sold it at Gadag a big place. Thus by the time the complaint was preferred the silk had reached Gadag and was in different hands. The recovery was therefore not possible. The non recovery of the two white bags is not of much importance as they could have been thrown away so that no traces of this case were left behind.

The next point for consideration is about the delay in complaint. The learned pleader for defence rightly asks why P.W. 14 eventhough he came to know that silk was sold by the accused to P.W. 3 on the 3rd morning itself waited till the 6th. The accused was asking P.Ws. 2 and 14 to come both morning and evening from the 3rd to 5th and naturally they were entertaining hopes of getting back their silk till the matters came to a breaking point on the 5th. The delay under such circumstances is consistant with the version of the prosecution.

From the evidence of the several P.Ws. it is now clear that forty eight lbs of silk was entrusted by P.Ws. 2 and 14 to the accused who was Rationing Officer and that he had dominion over it as a Government servant. Instead of keeping it in safe

custody and following the duties imposed upon him by law he sold away 40 lbs out of it to P.W.3 for a sum of Rs. 1280/- and thus committed criminal breach of trust. The evidence of P.Ws. 2,14,3,4, and 9 proves the case under section 409 I.P.C. As regards the offence of attempt to take illegal gratification the evidence of P.Ws. 2,14, 7 reach with the evidence of P.W. 8 and Ex. B. proves unmistakably the guilt of the accused for an offence under Section 161 I.P.C. read with section 511 I.P.C. It is however necessary at this stage to consider the evidence of D.W.7 who is a high placed official and whose evidence deserves reference. The evidence unmistakably discloses that the accused is a smart and energetic person quite diligent in his work. He had the knack to do his work satisfactorily. He was vigilent as Rationing Officer. It is one thing to be deligent in work and quote another to have good character. It has not been stated that the accused was of unimpeachable character and no easy inference can also be drawn. It is not uncommon that some dishonest persons are more vigilent than honest persons in their work for reasons obvious. Even if an inference is drawn from the evidence of D.W. 7 that the accused was not of bad character, the incident now in question happened seven months after D.W. 7 left the division and the accused should have later on fallen to evil ways and become a victim to temptation to amass wealth.

Thus I consider that the prosecution has proved the case against the accused beyond any doubt and the defence have failed to rebut it successfully. I therefore hold the accused guilty of the offence with which he stands charged convict him under Section 258 (2) Cr.P.C. and sentence him as follows:- One year rigorous imprisonment and a fine of rupees thousand or in default Rigorous imprisonment for six months for the offence under section 409 I.P.C. Six months Rigorous imprisonment for the offence under Section 161 I.P.C. read with section 511 I.P.C. The sentences shall run consecutively.

M.Os. I, II, III together with silk will be confiscated.

Pronounced in open court.

Sd. Y.Pitchi Reddi
Sub Divl. Officer.

true copy

For Collector.

p.t.o.

List of P.Ws. examined for prosecution.

1. Sri Eranna
2. [illegible]char
3. Iyla Mallanna
4. Tulja Ramsa
5. D. Chama Rao
6. Henry Pakkiyan
7. Sri Krishnamurthy Gowd
8. Padmanabha Char
9. K. Srinivasa Char
10. A. Adeppa, T.C.O. Bellary.
11. Raghavendra Rao
12. Narayanappa
13. Ramanathasa Sidlingi
14. Narasimhayya
15. R. Santhaseela, Inspector of Police, Siruguppa.

Defence Witness.

1. Sri Saranappa, Head Clerk, Textile Control Office, Bellary
2. H. Bhimasena Rao, Asst.Commrl.Tax Officer, Hospet.
3. A. C. Ramayya, Tansildar, Rayadrug
4. G, Dodda Basavanagowd, Special Revenue Inspector, Bellary.
5. N. Sudarsana Rao, Tahsildar, Hadagalli
6. S.K. Raghavendra Rao, Typist, Rationing Office, Hospet.
7. P. S. Viswanatha Iyer Esq., I.C.S., Secretary to Government, Education and Public Health Department, Fort St. George, Madras.

M.Os.

M.D.I One of the silk bags with silk
II Silk in the bag
III. Bag which contained silk and now empty.
III. Bed sheet.

List of exhibits filed for prosecution.

A.
A1 } Tickets from Hospet to Gadag.
A2
B. Telegram
B1. Receipt for telegram
C. Complaint.
D. Letter dated 2-8-45 addressed to the T.C.O. Bellary
F. Local Tappal and Despatch register.
F1. Entry relating to despatch of Ex. D.
G. Search list.
H. Collector's L.Dis. 1704/45 dated 13-9-46 sanctioning the prosecution of the accused.

For defence:
I and IA 164 statements before Sub Divl. Magistrate, Hospet.
II Note for evidence in section 159/45 on the file of D.M.C. Penukonda
III. Judgment in C.C. 215/1939 on the file of Sheristadar II class Magistrate, Hindupur.
IV Judgment in Cr. No. 159/45 on the file of D.M.C. Penukonda
V. Statement of Erappa recorded by the Spl. R.I. Hospet.
VI. -do- Thirumala Rao -do-
VII. Confidential instructions noted by the T.C.O. gathered by the Rationing Officer, Hospet.
VIII - Statement of chowkidar Bheemappa recorded by Thirumala Rao.
IX. -do- of D vid clerk, Rationing Office, Hospet recorded by Thirumala Rao.

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Home Department.

13.

G.O.Ms. No. 3629 dated 19.11.46.

Abstract.

Prisoners - Classification - K. Thirumula Rao - C.C.161/45 on the file of the Sub Divisional Magistrate, Bellary - 'B' class - Ordered.

From the D.M., Bellary, No. C.1898/46.E.1. dated 29.10.46.

Govt. direct that K. Thirumula Rao, convicted in C.C.No.161 of 1945 on the file of the Sub Divisional Magistrate, Bellary, be placed in 'B' class.

To

The D.M. Bellary.
,, the I.G. of Prisons, Madras (with a S.C. for communication to the xxixxxxxx jail in which the prisoner is confined).